NO. X06 UWY CV15 6050025 S	**:**	**SUPERIOR COURT**
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DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF	**:**	**COMPLEX LITIGATION DOCKET**
VICTORIA L. SOTO, ET AL.	**:**	**AT WATERBURY**
	:	
V.	**:**	
	:	
BUSHMASTER FIREARMS INTERNATIONAL, LLC, ET AL.	**:**	**MARCH 23, 2020**

PLAINTIFFS' OBJECTIONS TO REMINGTON'S REQUESTS TO REVISE

The Connecticut Supreme Court found the wrongful marketing CUTPA claims alleged by plaintiffs in the First Amended Complaint to be legally sufficient and directed the parties to proceed on those claims. The recently filed, streamlined Second Amended Complaint alleges those claims again, while also amending in accordance with the Court's ruling. In its Requests to Revise, Remington seeks to reframe these CUTPA claims to its advantage. Our pleading rules do not permit that; it is the plaintiff who is "master of the complaint." *Reclaimant Corp. v. Deutsch*, 332 Conn. 590, 607 n.17 (2019). Connecticut procedural rules, moreover, operate to ensure that cases move forward through the courts, not backward. Remington moved to strike four years ago, waiving the right to request revision. Even if it had not waived those rights, it would not matter: the Supreme Court held that the CUTPA claims alleged in the First Amended Complaint (and now re-alleged in the Second Amended Complaint) are sufficient as a matter of law. For these reasons alone, plaintiffs' objections to Remington's First and Second Requests to Revise must be sustained.

In addition to being waived, and pointless in light of the Supreme Court's ruling that the wrongful marketing CUTPA claims are legally sufficient, the First and Second Requests to Revise must also be rejected because they seek revisions that are plainly not required by

Connecticut law. A Request to Revise cannot be used to force a party to plead evidence, nor can it be used to narrow a plaintiff's claims. Longstanding pleading rules recognize that claims evolve and are shaped by facts learned through the discovery process. Discovery will define the full scope of Remington's marketing schemes, and the relationship between those schemes and the losses suffered at Sandy Hook Elementary School -- and discovery is in its early stages. For these reasons as well, the First and Second Requests to Revise must be rejected.[1]

[1] Plaintiffs will delete Count Eleven in accordance with the third requested revision.

OBJECTION AND RESPONSE TO REQUEST NO. 1

Portion of the Pleading Requested to Be Revised:

Paragraphs 32-51 of Count One through Eleven of the SAC.

Requested Revision

Revise the SAC to identify with particularity the specific advertisements and marketing activities by Remington that form the basis for the CUTPA claim asserted by Plaintiffs.

Reasons for Requested Revision

A request to revise may be used to obtain "a more complete statement of the allegations of an adverse party's pleading." Practice Book § 10-35(1) (2020). "The purpose of a request to revise is to secure a statement of the material facts upon which the adverse party bases his complaint or defense." *Rab Associates, LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934S, 2014 WL 4413764, at *2 (Conn. Super. Ct. July 30, 2014) (internal quotation marks and citation omitted). "Connecticut is a fact pleading state." *Bridgeport Harbour Place I, LLC v. Ganim*, 303 Conn. 205, 214 n.7 (2011). "If any such pleading does not fully disclose the ground of claim or defense, the judicial authority may order a fuller or more particular statement." Practice Book § 10-1 (2020). "Rules of pleading are not made for the purpose of tripping up the unknowing or unwary. They are designed to clarify and fix the issues and to confine the judicial inquiry necessary to decide the issues within reasonable and relevant limits." *Salem Park, Inc. v. Salem*, 149 Conn. 141, 144 (1961).

The Connecticut Appellate Court has held that "a claim under CUTPA must be pleaded with particularity to allow evaluation of the legal theory upon which the claim was based." *Keller v. Beckenstein*, 117 Conn. App. 550, 569 n.7 (2009) (quoting *S.M.S. Textile Mills, Inc. v. Brown, Jacobson, Tillinghast, Lahan & King, P.C.*, 32 Conn. App. 786, 797 (1993)). This Court also has recognized the "procedural requirement that a CUTPA claim be pleaded with particularity or at least specificity as to what facts are alleged to satisfy the claim of unfairness or deception." *Ward v. RAK Const., LLC*, No. CV09-5010067S, 2010 WL 1796107, at *4 n.2 (Conn. Super. Ct. Apr. 8, 2010) (Bellis, J.) (internal quotation marks and citation omitted).[FN1]

[FN1] Prior to these decisions, the Connecticut Supreme Court noted that it was "unpersuaded that there is any special requirement of pleading particularity connected with a CUTPA claim" in the context of holding that plaintiffs were not required to "rephrase their pleadings to conform to the three prongs of the cigarette rule." *Macomber v. Travelers Prop. & Cas. Corp.*, 261 Conn. 620, 644 (2002). "The clear implication of *Macomber* is that form of the pleadings will not keep a court from evaluating whether the factual allegations would support a CUTPA claim, *but failure to plead sufficient facts to support such a claim could still be fatal." Davenport v. W.H.*

In this case, the SAC fails to identify the advertisements and marketing materials that Plaintiffs claim violated CUTPA. As a result, Remington lacks notice of the particular statements or representations that form the basis of Plaintiffs' CUTPA claim. Where a CUTPA claim is premised on allegedly unfair or deceptive advertisements or marketing materials, Plaintiffs must identify those specific materials in their complaint. *See In re Ford Fusion & C Max Fuel Econ. Litig*., No. 13-MD-2450 KMK, 2015 WL 7018369, at *20–21 (S.D.N.Y. Nov. 12, 2015) (holding, in the context of a CUTPA claim, that "Plaintiffs must identify specific advertisements and promotional materials; allege when the [Plaintiffs] were exposed to the materials; and explain how such materials were false or misleading.") (internal quotation marks and citation omitted).

Indeed, Plaintiffs previously identified specific representations in Remington's advertisements and marketing materials in their First Amended Complaint ("FAC"). *See* Entry 276.00, redlined FAC ¶¶ 77-93. The Connecticut Supreme Court cited and relied upon those allegations in the FAC in permitting Plaintiffs to proceed with their CUTPA claim based on their narrow and limited theory that Remington wrongfully marketed the rifle used in the shooting and that such marketing caused or motivated Adam Lanza to commit his crimes. *See Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 73-74 (2019). Plaintiffs nevertheless failed to identify *any* particular advertisements or marketing materials in the SAC or any specific statements made by Remington in such materials.

A request to revise is necessary to enable Remington to intelligently respond to the SAC and to prepare its defenses, including preparation or any motion to strike or motion for summary judgment that may be appropriate. Indeed, courts have recognized that one of the purposes of a request to revise is to set up a motion to strike or other dispositive motion. See *Rowe v. Godou*, 209 Conn. 273, 279 (1988) ("If a request to revise had been granted and complied with, the defendants would then have been in a position to move to strike any count of the plaintiff's revised complaint pertaining to their respective liabilities for which the plaintiff was unable to allege the necessary prerequisites."); *Larsen v. Timothy's Ice Cream*, Inc., No. SPBR 950529502, 1995 WL 476795, at *2 (Conn. Super. Ct. June 30, 1995) ("One of the purposes for seeking a request to revise is to set up the complaint in order to file a motion to strike testing the legal sufficiency of the allegations of the complaint.").

Here, it is essential for Plaintiffs to identify the specific advertisements or marketing materials on which their CUTPA claim is based to enable Remington to assert its defenses, including that (1) Remington's advertising and marketing of its products did not constitute an unfair trade practice; (2) Remington's advertisements and marketing

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Milikowski, Inc., No. LLI-CV-09-5005534S, 2009 WL 2231660, at *3 (Conn. Super. Ct. June23, 2009) (emphasis added). "Indeed, there is nothing in *Macomber* to suggest that CUTPA is exempt from fact pleading requirements." *Janet-McComiskey v. Ramm Fence Sys., Inc.*, No. FSTCV106002771S, 2011 WL 263177, at *3 (Conn. Super. Ct. Jan 3, 2011).

materials were not causally connected to harm suffered by Plaintiffs; (3) Plaintiffs' claims are barred by the statute of limitations, and (4) Plaintiffs' claims are barred by the First Amendment to the United States Constitution, a question of law for the Court's determination. Remington cannot fairly pursue these defenses without notice of the specific advertisements on which Plaintiffs are relying to assert their CUTPA claim. Notably, the factual premise for Plaintiffs' CUTPA claims—that Adam Lanza was exposed to a Remington advertisement and was motivated by the advertisement to commit his crimes—is not information to be found in Remington's records.

A request to revise is also appropriate to limit the scope of the SAC and to properly frame the issues before trial. *See Rego v. Conn. Ins. Placement Facility*, 219 Conn. 339, 349 (1991) ("It is well established that the pleadings of the parties frame the issues before the trial court."); *Rudder v. Mamanasco Lake Park Ass'n*, 93 Conn. App. 759, 768 (2006) (holding that the allegations of the complaint are critical because the "purpose of [the] pleadings is to frame, present, define, and narrow the issues, and to form the foundation of, and to limit, the proof to be submitted" at trial); *Rab Associates, LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934S, 2014 WL 4413764, at *2 (Conn. Super. Ct. July 30, 2014) ("The request is one of several provisions used for the framing of issues for trial.") (internal quotation marks and citation omitted). Here, a revision to the SAC is necessary to make clear which specific advertisements and marketing materials form the basis for the CUTPA claim asserted by Plaintiffs in order to narrow and frame the issues for discovery and trial.

Objection to First Requested Revision:

A. Revision Is Not Warranted Because the Second Amended Complaint Alleges the Same Wrongful Marketing CUTPA Claims Alleged by the First Amended Complaint.

In the First Amended Complaint, plaintiffs alleged that Remington engaged in a wrongful marketing campaign which included, for example, an effort to "grow the AR-15 market by extolling the militaristic and assaultive qualities of their AR-15 rifles and, specifically, the weapon's suitability for offensive combat missions." *Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 73 (2019) (summarizing First Amended Complaint wrongful marketing CUTPA allegations). The Second Amended Complaint alleges the same wrongful marketing CUTPA claims. It alleges that Remington's assault rifles maintain the design, functionality and appearance of the M-16, DN 276.00, Second Am. Compl. ¶ 30, and that Remington marketed its assault rifles, including the XM15-E2S, by promoting their assaultive and militaristic uses. *Id.* ¶

32. It alleges further that Remington's militaristic marketing promoted the image of its assault rifles as combat weapons used for the purpose of waging war and killing human beings. *Id.* ¶ 33. Its marketing glorified the lone gunman, promoted lone gunman assaults, and effectively promoted its assault rifles for mass casualty assaults. *Id.* ¶¶ 35-36, 38. In short, the Second Amended Complaint's allegations concerning Remington's wrongful marketing schemes are substantially the same as those of the First Amended Complaint.

B. Remington's Request to Revise Is Waived.

Pursuant to Practice Book § 10-7, "the filing of any pleading provided for by [§ 10-6] will waive the right to file any pleading which might have been filed in due order and which precedes it in the order of pleading provided in that section." Prac. Bk. § 10-7. In 2016, Remington elected to bypass revision and proceed with a motion to strike. Pursuant to Practice Book §§ 10-6 and 10-7, Remington therefore waived the right to request revision of the CUTPA allegations. (Under those provisions it also waived the right to move to strike the CUTPA allegations for lack of particularity.) In addition, the Supreme Court reviewed all the claims Remington raised by motion to strike, found the wrongful marketing CUTPA claims sufficient as a matter of law, and directed the Court to proceed with the wrongful marketing CUTPA claims. *Soto*, 331 Conn. at 158 (remanding "for further proceedings according to law").

As stated above, the wrongful marketing CUTPA claims now alleged are substantively the same claims as those alleged in the First Amended Complaint and approved by the Supreme Court. The issue is not whether the subsequent complaint uses the same words or adds or deletes specific evidentiary allegations; the issue is whether the essence of the claim is the same. When a plaintiff files an amended pleading that does not "substantively alter" the claim in issue, the defendant cannot go back and file a waived response. *See Cordani v. Husein*, 2015 WL 5315207, at *2 (Conn. Super. Aug. 12, 2015) (Shapiro, J.) (since answer to original complaint was filed

and amendment "did not substantively alter the counts which were previously answered," defendant has waived right to move to strike answered counts); s*ee also* Prac. Bk. §§ 10-6, 10-7; *Chevy Chase Bank, F.S.B. v. Avidon*, 161 Conn. App. 822, 834 (2015) (trial court did not err in denying defendant's motion to amend answer when amended complaint was substantively the same as previous complaint); *Liss v. Milford Partners, Inc.*, 2008 WL 4635981, at *2 (Conn. Super. Sept. 29, 2008) (Berger, J.) ("[W]here an answer to the original complaint has been filed and where the amendment does not alter the counts previously answered, courts have found that the defendant has waived his right to move to strike the answered counts"); *Rosenay v. Taback*, 2017 WL 5923462, at *1 (Conn. Super. Ct. Oct. 31, 2017) (Stevens, J.) (holding defendant's waived pleading rights were not renewed by amendment of complaint that did not "substantially change the causes of action"); *O & G Indus., Inc. v. Litchfield Ins. Grp., Inc.*, 2016 WL 3451962, at *4 (Conn. Super. June 3, 2016) (Pickard, J.) (holding that defendant's waiver of its motion to strike was not renewed by plaintiff's filing of second and third amended complaints because the amended complaints, "while adding some factual allegations," did not substantively change the plaintiff's claims); *Cavaliere v. Yaworski*, 2011 WL 263173, at *3 (Conn. Super. Jan. 3, 2011) (Shapiro J.) (holding that defendant waived motion to strike plaintiff's third amended complaint by filing answer to first amended complaint, which was substantively the same as third amended complaint); *see generally Am. Progressive Life & Health Ins. Co. of New York v. Better Benefits, LLC*, 292 Conn. 111, 120 (2009) (applying Prac. Bk. §§ 10-6, 10-7 order of pleadings and waiver rules).

Remington waived the right to file a Request to Revise (and a Motion to Strike) by filing its 2016 Motion to Strike. Because the wrongful marketing claims alleged by the Second Amended Complaint are substantively the same as those alleged by the First Amended

Complaint, Remington's right to request revision is not renewed by the filing of the Second Amended Complaint. Even if it were renewed, revisions intended to set the Second Amended Complaint up for a Motion to Strike are unwarranted as the Supreme Court has already held that the claims asserted are sufficient as a matter of law. For these reasons alone, the plaintiffs' objection to the First Request to Revise should be sustained.

C. In Addition to Being Waived, the Request to Revise Must Be Denied under Practice Book § 10-1.

A pleading need only "contain a plain and concise statement of the material facts on which the pleader relies, *but not of the evidence by which they are to be proved*...." Prac. Bk. § 10-1 (emphasis added). In ruling on a request to revise, the standard "is not whether the pleading discloses all that the adversary desires to know in aid of his own cause, but whether it discloses the material facts which constitute the cause of action." *Kileen v. Gen. Motors Corp*., 36 Conn. Supp. 347, 348 (1980) (Mancini, J.); *Talbot v. Kirkwood*, 2004 WL 1153747, at *1 (Conn. Super. May 4, 2004) (Bryant, J.) (same). The Second Amended Complaint already makes a "plain and concise statement of the material facts" concerning the marketing conduct at issue. For example, it alleges that Remington marketed its assault rifles by promoting their assaultive and militaristic uses and the image of its assault rifles as combat weapons used for the purpose of waging war and killing human beings. DN 176, Sec. Am. Compl. ¶¶ 33; *see also id.* ¶¶ 32-38.

A request to revise seeking information that is "merely evidential," such as this one, should not be granted because "the defendant is not entitled to know the plaintiff's proof but only what he claims as his cause of action." *Kileen*, 36 Conn. Supp. at 348-49; *see also Barlow v. Town of Eastford*, 2000 WL 1838571, at *1 (Conn. Super. Nov. 21, 2000) (Foley, J.) (sustaining objection to request to revise because the information requested was "better obtained through discovery and [was] not necessary, as a matter of pleading, to reasonably appraise" the party of

the nature of the claims). Simply put, a "request to revise may not be used as a substitute for discovery," *Golino v. MacDonald*, 1990 WL 283122, at *1 (Conn. Super. Oct. 30, 1990) (Dorsey, J.), especially where – as here – the plaintiff needs discovery to fully delineate the scope of the defendant's wrongful conduct. Thus, where, as here, a complaint alleges the material facts underlying the plaintiff's claims, a request to revise should be summarily rejected.

D. Remington Misstates the Applicable Legal Standard: There is No Requirement That This CUTPA Violation Be Alleged with Particularity.

Our Supreme Court has stated that pleading CUTPA violations "with particularity" is not required. *Macomber*, 261 Conn. at 643-44. In *Macomber*, the Supreme Court considered whether the plaintiff, an automobile accident victim who brought an action against a liability and annuity issuer, sufficiently stated a claim under CUTPA relating to the defendant's failure to disclose a rebate scheme that existed in connection with the purchase of annuities. *Id.* at 626-27. The trial court granted the defendant's motion to strike, holding that the plaintiff had failed to sufficiently plead the CUTPA claim. *Id.* at 622-23. On appeal, the defendant – like Remington here – claimed that the plaintiff's CUTPA claim was legally insufficient because it "was not pleaded with sufficient particularity." *Macomber*, 261 Conn. at 643. The Court disagreed. It held that the plaintiff's allegation that the "defendants used and employed unfair and deceptive acts and practices in connection with the solicitation and entering into of structured settlements in connection with the sale of annuities" was sufficient to state a CUTPA claim because there was not "*any special requirement of pleading particularity connected with a CUTPA claim, over and above any other claim*," *id.* at 643-44 (emphasis added).

Macomber is controlling precedent. *See Klewin v. Highland Hills Apartments*, LLC, 2018 WL 1769309, at *6 (Conn. Super. Mar. 15, 2018) (Calmar, J.) ("There is no "special requirement of pleading particularity connected with a CUTPA claim, over and above any other claim.")

(quoting *Macomber*, 261 Conn. at 644); *Kawanobe v. Smith*, 2009 WL 2231682, at *3 (Conn. Super. June 23, 2009) (Fischer, J.) (same); *Fradera v. State Farm Mut. Auto. Ins. Co.*, 2013 WL 4419426, at *6 (Conn. Super. July 26, 2013) (Fischer, J.) (same); *Tuzinkiewicz v. Steckel*, 2013 WL 1849279, at *3 (Conn. Super. Apr. 10, 2013) (Taggart, J.) (same); *Tomaszewski v. Member Servs. Ctr., Inc.*, 2011 WL 3198869, at *3 (Conn. Super. June 23, 2011) (Burke, J.) (same); *Empower Health LLC v. Providence Health Sols. LLC*, 2011 WL 2194071, at *6 (D. Conn. June 3, 2011) (Hall, J.) (same); *Dispazio v. Oakleaf Waste Mgmt., LLC*, 2011 WL 1026094, at *19 (Conn. Super. Feb. 18, 2011) (Burke, J.) (same).

Nevertheless, Remington claims that a footnote in *Keller v. Beckenstein*, 117 Conn. App. 550, 569 n.7 (2009), "held" that the particularity standard articulated in the 1993 Appellate Court opinion, *S.M.S. Textile Mills, Inc.*, survived *Macomber*. *See* DN 281, Req. to Rev. at 2 ("The Connecticut Appellate Court has held that 'a claim under CUTPA must be pleaded with particularity to allow evaluation of the legal theory upon which the claim was based.'") (quoting *Keller*, 117 Conn. App. at 569 n.7).

In *S.M.S. Textile Mills, Inc.*, a pre-*Macomber* decision, the Appellate Court held that the plaintiff in a legal malpractice action failed to state a claim under CUTPA because the plaintiff's allegations of unlawful conduct were not "pleaded with particularity to allow evaluation of the legal theory upon which the claim [was] based." *S.M.S. Textile Mills, Inc. v. Brown, Jacobson, Tillinghast, Lahan and King, P.C.*, 32 Conn. App. 786, 797 (1993) (citing *Sorisio v. Lenox, Inc*., 701 F. Supp. 950, 962 (D. Conn. 1988) (Burns, J.)). To the extent *S.M.S. Textile* intended to adopt a broad "plead with particularity" standard applicable to CUTPA claims, any such rule was rejected by *Macomber*. *See Venegas v. Horace Mann Ins. Co*., 2017 WL 2453115, at *2 n.2 (Conn. Super. May 9, 2017) (Ecker, J.) ("[A]t least to the extent that *S.M.S. Textile* intended to

impose a heightened pleading requirement for CUTPA claims, this aspect of the Appellate Court's holding was overruled, *sub silentio*, in *Macomber*.); *Sanderson v. Isopur Fluid Techs., Inc*., 2004 WL 1098711, at *4 (Conn. Super. Apr. 30, 2004) (Hurley, J.T.R.) ("A CUTPA claim no longer must be pleaded with particularity.") (citing *Macomber*); *Milltex Properties v. Johnson*, 2004 WL 615748, at *7 (Conn. Super. Mar. 15, 2004) (Hurley, J.T.R.) (same).

It is true that the footnote in *Keller v. Beckenstein*, 117 Conn. App. at 569 n.7, on which Remington relies, repeats the *S.M.S. Textile Mills, Inc.* particularity standard without distinguishing *Macomber*. But as now-Justice Ecker more recently explained in a trial court decision, that footnote is dictum:

> Unfortunately, the particularity requirement expressed in *S.M.S. Textile* was quoted by the Appellate Court more recently, in a post-*Macomber* case, *see Keller v. Beckenstein*, 117 Conn.App. 550, 569 n.7 (2009). *This was done without analysis, and without reference to* Macomber*, so it can be understood as dicta.*

Venegas, 2017 WL 2453115, at *2 n.2 (emphasis added).

Remington's efforts to revive the "pleaded with particularity" standard rely on additional cases that either (1) assert CUTPA claims based on breach of contract and require conduct in addition to breach to be alleged, or (2) apply inapplicable federal pleading requirements. As detailed below, Remington's reliance on both is misguided.

First, Remington reproduces *a portion* of a footnote of this Court's decision in *Ward v. Rak Const., LLC*, 2010 WL 1796107 (Conn. Super. Apr. 8, 2010) to suggest that plaintiffs are required to plead their CUTPA claims "with particularity or at least specificity." *See* DN 281, Req. to Revise, at 2 (citing *Ward* for the proposition that "[t]his Court also has recognized the 'procedural requirement that a CUTPA claim be pleaded with particularity or at least specificity as to what facts are alleged to satisfy the claim of unfairness or deception'") (internal citations omitted). This excerpt is taken out of context and omits critical language. Contrary to

Remington's suggestion, this excerpt does not reflect that the Court found a heightened pleading standard is applicable to all CUTPA claims; this language was extracted from a detailed discussion of the split of authority existing over whether a breach of contract can amount to a CUTPA violation "in the absence of substantial aggravating circumstances." *Ward,* 2010 WL 1796107 at *4. The context and omitted language surrounding the excerpt actually reads:

> Courts have shown a willingness to strike CUTPA claims, where there are no further specific allegations as to why [a separately alleged] breach of contract was unfair or deceptive. The substantive requirement of additional facts in addition to breach may be coupled with a procedural requirement that a CUTPA claim be pleaded with particularity or at least specificity as to what facts are alleged to satisfy the claim of unfairness or deception. . . . This approach allows courts readily to dispose of claims in which the plaintiff makes only a general allegation of a CUTPA violation premised on a breach of contract."

Ward, 2010 WL 1796107 at *4 n.2. When breach of contract is alleged and a CUTPA claim is appended, there is an argument for alleging additional facts to show the CUTPA claim is appropriate. This case, however, is not a contract case with a piggy-backed CUTPA claim. It is a pure CUTPA claim under a theory specifically recognized by our Supreme Court. Remington's characterization of this Court's reasoning *Ward* is mistaken and its reliance on *Ward* misplaced.

Nor does Remington's citation to federal authority, such as *In re Ford Fusion*, support its claim that plaintiffs must allege their CUTPA claims "with particularity." Remington quotes *In Re Ford Fusion* for the proposition that "Plaintiffs must identify specific advertisements and promotional materials" to sufficiently plead a CUTPA claim. *See* DN 281, Req. to Revise, at 3. As Remington surely knows, federal pleading rules are quite different from the Practice Book pleading rules:

> Anyone who has seen a federal complaint post-*Twombly* knows the difference between state and federal pleading practice. Most federal complaints these days are too long and even include recitations of the evidence to give them 'plausibility.' *But in Connecticut this is expressly against the rules, which demand a concise statement and prohibit recitals of the evidence*.

Taylor v. Hartford Fin. Servs. Grp., Inc., 2017 WL 5014868, at *1 (Conn. Super. Sept. 26, 2017) (Moukawsher, J.) (emphasis added). Indeed, it was this distinction between Connecticut and federal pleading standards that led Justice Ecker to conclude in *Venegas* that in addition to being dictum, the *Keller/S.M.S. Textile* "pleaded with particularity" statements are not reliable precedent:

> Wholly apart from the later appearance of *Macomber*, the Appellate Court's holding on this point in *S.M.S. Textile* may be problematic for a different reason. *S.M.S. Textile* relies on a federal case to hold that "a claim under CUTPA must be pleaded with particularity." 32 Conn. App. at 797 (citing *Sorisio v. Lenox, Inc*., 701 F.Sup. 950, 962 (D. Conn.), aff'd, 863 F.2d 195 (2d Cir. 1988)). But *Sorisio* was decided in accordance with federal pleading requirements under Fed.R.Civ.P. 9(b), which has no counterpart in the Connecticut Rules of Practice.

Venegas, 2017 WL 2453115, at *2 n.2 (emphasis added).[3] In short, Remington's first requested revision is based on the wrong legal standard and must be rejected.

E. Remington's Other Arguments Must Be Rejected.

Remington argues that it needs specific allegations in order to set up a motion to strike, DN 281, Req. to Rev. at 3, but it already had its chance at a motion to strike, and the Supreme Court determined plaintiffs' claims will proceed. Remington also wants specific allegations to set up a summary judgment motion. *See id.* at 4. Once again, Remington ignores Connecticut law. Connecticut pleading standards do not permit, let alone require, the kind of allegations it seeks. Under Connecticut pleading law, *evidence* is not alleged. Prac. Bk. § 10-1 ("Each pleading

[3] The application of the federal pleading standard to a Connecticut state case may lead to harmful error:

> A number of CUTPA/CUIPA decisions by federal courts in the District of Connecticut have noted the difference between state and federal pleading standards, and have dismissed claims under the heightened federal standard while noting that the claims would have survived under state pleading rules.

Venegas, 2017 WL 2453115, at *2 n.2.

shall contain a plain and concise statement of the material facts . . . *but not of the evidence by which they are to be proved*.") (emphasis added); *see Brown & Brown, Inc. v. Blumenthal*, 297 Conn. 710, 735 n.23 (2010) (reasoning that the plaintiff's "inclusion of evidence in a complaint [was] a *violation of our rules of practice*," and noting that "attorneys in Connecticut are not required, at the time a pleading is filed, to substantiate the allegations contained therein with evidentiary support") (emphasis supplied); *HSBC Bank USA v. Maurer*, 2016 WL 3391841, at *7 (Conn. Super. May 26, 2016) (Corradino, J.) (noting same); *Baker v. Atria Mgmt. Co., LLC*, 2014 WL 486869, at *2 (Conn. Super. Jan. 13, 2014) (Taggart, J.T.R.) ("The plaintiff also seeks to bolster her complaint with evidence in the form of a transcript of a conversation and copy of a newspaper article. In accordance with the Practice Book, however, a complaint is to be supported by factual allegations, not legal conclusions or evidence.").

In short, the wrongful marketing CUTPA claims accepted by the Supreme Court concern Remington's marketing campaigns or schemes[4] to promote its assault rifles, which include, for example, the promotion of "civilian assault rifles for offensive, military style attack missions." *Soto*, 331 Conn. at 131. The Court found that the "most directly foreseeable harm" from such conduct is "that innocent third parties could be shot as a result." *Soto*, 331 Conn. at 99. Plaintiffs have alleged the necessary material facts to support these claims in the Second Amended Complaint, and now discovery will reveal the full course of conduct engaged in by Remington. The standard on a request to revise "is not whether the pleading discloses all that the adversary desires to know in aid of his own cause, but whether it discloses the material facts which constitute the cause of action." *Talbot*, 2004 WL 1153747, at *1 (citing *Kileen v. Gen. Motors*

[4] *See Soto*, 331 Conn. 105-06 (referencing "marketing schemes"); *id.* at 75 (referencing "marketing campaign[s]"), *id.* at 157 (referencing "promotional schemes").

Corp., 36 Conn. Supp. 347, 48 (1980)) (emphasis added). The plaintiffs have met that standard, and therefore plaintiffs' objections to the First Request to Revise must be sustained.

REQUEST NO. 2

Portion of Pleading to Be Revised

Paragraphs 51 and 52 of Count One through Eleven of the SAC.

Requested Revision

Revise the SAC to plead facts establishing a causal link between Remington's alleged conduct and Plaintiffs' alleged damages.

Reason for Requested Revision

A request to revise may be used to obtain "a more complete statement of the allegations of an adverse party's pleading." Practice Book § 10-35(1) (2020). "The purpose of a request to revise is to secure a statement of the material facts upon which the adverse party bases his complaint or defense." *Rab Associates, LLC v. Bertch Cabinet Mfg., Inc.*, No. NNHCV106015934S, 2014 WL 4413764, at *2 (Conn. Super. Ct. July 30, 2014) (internal quotation marks and citation omitted). "Connecticut is a fact pleading state." *Bridgeport Harbour Place I, LLC v. Ganim*, 303 Conn. 205, 214 n.7 (2011). "If any such pleading does not fully disclose the ground of claim or defense, the judicial authority may order a fuller or more particular statement." Practice Book § 10-1 (2020). "Rules of pleading are not made for the purpose of tripping up the unknowing or unwary. They are designed to clarify and fix the issues and to confine the judicial inquiry necessary to decide the issues within reasonable and relevant limits." *Salem Park, Inc. v. Salem*, 149 Conn. 141, 144 (1961).

In order to plead a claim under CUTPA, Plaintiffs must allege facts to establish that Remington's alleged conduct was both the *cause-in-fact* and the *proximate cause* of the harm suffered by Plaintiffs. As the Connecticut Supreme Court has held, "[t]he language 'as a result of' [in CUTPA] requires a showing that the prohibited act was the proximate cause of a harm to the plaintiff." *Abrahams v. Young & Rubicam, Inc.*, 240 Conn. 300, 306 (1997) (emphasis added). This Court has also recognized the requirement of pleading facts to establish proximate causation when asserting a CUTPA claim. *See Builes v. Kashinevsky*, No. CV095022520S, 2009 WL 3366265, at *4 (Conn. Super. Ct. Sept. 15, 2009) (Bellis, J.).

"With regard to the requisite causal element, it is axiomatic that proximate cause is an actual cause that is a substantial factor in the resulting harm." *Abrahams v. Young & Rubicam, Inc.*, 240 Conn. 300, 306 (internal quotation marks omitted). "[T]he question to be asked in ascertaining whether proximate cause exists is whether the harm which occurred was of the same general nature as the foreseeable risk created by the

defendant's act." *Id*. Accordingly, in *Abrahams*, the Connecticut Supreme Court concluded that the plaintiff could not assert a CUTPA claim because "*[t]he plaintiff has not alleged, nor can it be reasonably inferred from the plaintiff's allegations,* that [the defendant] either intended or could have foreseen that, as a result of its attempt to bribe the plaintiff, he would be injured by an erroneous indictment for bribery or by publication of the incorrect accusations therein." *Id*. at 307.

Here, Plaintiffs have failed to plead *any* facts to allege that Remington's conduct was the cause-in-fact or the proximate cause of their damages. For example, the SAC does not allege any facts to establish that Plaintiffs' decedents would not been murdered by Adam Lanza *but for* the publication of Remington's advertisements or marketing materials. The SAC contains no factual allegations to establish that Remington's advertising or marketing materials caused or motivated Adam Lanza to commit his crimes or even that he viewed such advertisements or marketing materials. Indeed, Adam Lanza is *not even mentioned* in the SAC.

Plaintiffs inexplicably deleted any allegations regarding Adam Lanza that were previously included in their FAC. See Entry 276.00, redlined FAC ¶¶ 184-91. The Connecticut Supreme Court specifically cited and relied upon those allegations in the FAC in permitting Plaintiffs to proceed with their CUTPA claim based on their narrow and limited theory that Remington wrongfully marketed the rifle used in the shooting and that such marketing caused or motivated Adam Lanza to commit his crimes. *See Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 74-75, 98-100 (2019). The Court emphasized, however, that "[p]roving such a causal link at trial may prove to be a Herculean task." *Id.* at 98. Even pleading allegations of a causal link in the SAC has proven to be a Herculean task for Plaintiffs because they have removed the factual allegations essential to establishing causation under the Court's ruling.

Plaintiffs cannot avoid revising their SAC to include such allegations merely by arguing that they have pled that Remington's conduct was a "substantial factor" in the injuries suffered by Plaintiffs. *See* Entry 276.00, SAC Counts One-Eleven ¶ 52. Pleading that Remington's conduct was a substantial factor in the harm suffered by Plaintiffs harm is a *legal conclusion* that is unsupported by any facts. Without pleading such facts, Plaintiffs cannot establish the necessary causal connection between Remington's alleged conduct and the harm suffered by Plaintiffs. Indeed, there is *no* plausible causal connection between the publication of an advertisement and the deaths of Plaintiffs' decedents in the absence of such factual allegations. Moreover, Plaintiffs cannot avoid including such allegations in the SAC by arguing that they need discovery in order to support them. Plaintiffs must include such factual allegations in the SAC in order to even maintain an action under CUTPA. *See Travelers Indem. Co. v. Cephalon, Inc.*, 620 Fed. Appx. 82, 87 (3d Cir. 2015) ("Here, the allegations in the Amended Complaint fail to establish proximate cause. Indeed, Plaintiffs did not allege that any doctor relied on Defendants' alleged misrepresentations in prescribing Actiq or Fentora, or that these prescriptions would not have been written if these physicians had not received the allegedly fraudulent information from Cephalon. Thus, Plaintiffs have not sufficiently pleaded causation, as required by CUTPA, and we will affirm the District

Court's dismissal of the CUTPA claims."); *Nwachukwu v. Liberty Bank*, 257 F. Supp. 3d 280, 303 (D. Conn. 2017) (holding that an allegation that plaintiff suffered economic loss "as a result" of the bank account's closing was insufficient to state a CUTPA claim because "[t]he proposed pleading contains no allegations describing how the bank's conduct caused Plaintiff an economic loss") (internal quotation marks omitted); *Von Pein v. Magic Bristles, LLC*, No. CV126008266S, 2013 WL 453048, at *7 (Conn. Super. Ct Jan. 8 2013) (holding that plaintiffs "merely state the legal conclusion that this violation caused their injury" and failed to "allege facts demonstrating any type of causal relationship between this violation of the Home Improvement Act" and their alleged injury); *Patterson v. Sullo*, No. CV116008633S, 2012 WL 4040259, at *6 (Conn. Super. Ct. Aug. 20, 2012) (stating that "[t]he allegation that the plaintiffs suffered monetary losses and damages 'as a direct and proximate result of the defendant's acts' is a legal conclusion that lacks the factual support to establish an ascertainable loss by or as a result of the alleged misrepresentation itself"); *Duncan v. PEH I*, No. CV020817088S, 2003 WL 1962789, at *5 (Conn. Super. Ct. Apr. 1, 2003) ("the plaintiff in the present case has failed to allege sufficient facts to demonstrate how these violations were the actual cause of the injury"); *Heath v. Micropatent*, No. CV 97401481, 1999 WL 1328140, at *3 (Conn. Super. Ct. Dec.30, 1999) (holding that plaintiffs failed to allege specific facts showing a causal nexus between defendant's conduct and their alleged economic injuries); *see generally Palmer v. Scofield*, No. CV065003265S, 2006 WL 2847912, at *1 (Conn. Super. Ct. Sept. 26, 2006) ("[M]ere statements of legal conclusion, that such conduct was reckless and a substantial factor in causing the injuries, cannot support the claim without further demonstration of facts to support the alleged claim").

Accordingly, the SAC should be revised to include specific facts alleging a causal link between Remington's alleged conduct and Plaintiffs' harm.

Objection to Second Requested Revision:

A. Revision Is Not Warranted Because the Second Amended Complaint Alleges the Same Wrongful Marketing CUTPA Claim Alleged by the First Amended Complaint.

Proximate cause is the key to CUTPA standing: "standing to bring a CUTPA claim will lie only when the purportedly unfair trade practice is alleged to have directly and proximately cause the plaintiff's injuries." *Soto,* 331 Conn. at 94. The Supreme Court found that the allegations of the First Amended Complaint established plaintiffs' CUTPA standing, i.e. proximate cause:

> In the present case, the wrong charged is that the defendants' promoted the use of their civilian assault rifles for offensive, military style attack missions. The *most directly foreseeable harm* associated with such advertising is that innocent third parties could be shot as a result. The decedents are the ones who got shot.

Soto, 331 Conn. at 99 (emphasis added). Breaking this holding into its component parts, the Supreme Court found plaintiffs had alleged foreseeability ("innocent parties could be shot" as a result of the Remington's promotion of "the use of their civilian assault rifles for offensive, military style attack missions") and cause-in-fact ("decedents are the ones who got shot"). *Id.*

The Second Amended Complaint tracks the Supreme Court's reasoning exactly. It alleges that a shooting occurred at Sandy Elementary School on December 14, 2012. DN 276, Sec. Am. Compl. ¶ 1. It alleges that Remington engaged in marketing schemes, which did not simply market the assault rifle used in that shooting, but "promot[ed] the[] militaristic and assaultive uses" of its assault rifles; promoted the image of its assault rifles as combat weapons "used . . . [to] wag[e] war and kill[] human beings;" "promoted lone gunman assaults;" and "promoted its AR-15s for mass casualty assaults" and "criminal use[.]" *Id.* ¶¶ 12, 32, 33, 38-39. Just as in the First Amended Complaint, plaintiffs allege that this conduct was a "substantial factor" resulting in the injury, suffering and death of plaintiffs' decedents. *Id.* ¶¶ 52-53. In short, the Second Amended Complaint adequately alleges both that Remington engaged in a wrongful marketing campaign and marketing schemes and that this conduct was a substantial factor resulting in the injuries and deaths suffered.

B. Remington's Request to Revise Is Waived.

Pursuant to Practice Book § 10-7, "the filing of any pleading provided for by [§ 10-6] will waive the right to file any pleading which might have been filed in due order and which precedes it in the order of pleading provided in that section." Prac. Bk. § 10-7. In 2016, Remington elected to bypass revision and proceed with a motion to strike. Pursuant to Practice Book §§ 10-6 and 10-7, Remington therefore waived the right to request revision of the CUTPA allegations, including the allegation of CUTPA causation. (Under those provisions it also waived

the right to move to strike the CUTPA allegations for lack of particularity.) In addition, the Supreme Court reviewed all the claims Remington raised by motion to strike, found the wrongful marketing CUTPA claims sufficient as a matter of law, and directed the Court to proceed with those claims. *Soto*, 331 Conn. at 158 (remanding "for further proceedings according to law").

As stated above, the wrongful marketing CUTPA violation claim – and, more specifically, the causation element of that claim – is substantively the same as the one alleged in the First Amended Complaint and approved by the Supreme Court. When a plaintiff files an amended pleading that does not "substantively alter" the claim in issue, the defendant cannot go back and file a waived response. *Cordani v. Husein*, 2015 WL 5315207, at *2 (Conn. Super. Aug. 12, 2015) (Shapiro, J.) (since answer to original complaint was filed and amendment "did not substantively alter the counts which were previously answered," defendant has waived right to move to strike answered counts); s*ee also* Prac. Bk. §§ 10-6, 10-7; *Chevy Chase Bank, F.S.B. v. Avidon*, 161 Conn. App. 822, 834 (2015) (trial court did not err in denying defendant's motion to amend answer when amended complaint was substantively the same as previous complaint); *Liss v. Milford Partners, Inc.*, 2008 WL 4635981, at *2 (Conn. Super. Sept. 29, 2008) (Berger, J.) ("[W]here an answer to the original complaint has been filed and where the amendment does not alter the counts previously answered, courts have found that the defendant has waived his right to move to strike the answered counts"); *see also Rosenay v. Taback*, 2017 WL 5923462, at *1 (Conn. Super. Ct. Oct. 31, 2017) (Stevens, J.) (holding defendant's waived pleading rights were not renewed by amendment of complaint that did not "substantially change the causes of action"); *O & G Indus., Inc. v. Litchfield Ins. Grp., Inc.*, 2016 WL 3451962, at *4 (Conn. Super. June 3, 2016) (Pickard, J.) (holding that defendant's waiver of its motion to strike was not renewed by plaintiff's filing of second and third amended complaints because the amended

complaints, "while adding some factual allegations," did not substantively change the plaintiff's claims); *Cavaliere v. Yaworski*, 2011 WL 263173, at *3 (Conn. Super. Jan. 3, 2011) (Shapiro J.) (holding that defendant waived motion to strike plaintiff's third amended complaint by filing answer to first amended complaint, which was substantively the same as third amended complaint); *see generally Am. Prog. Life & Health Ins. Co. of New York v. Better Benefits, LLC*, 292 Conn. 111, 120 (2009) (applying Prac. Bk. §§ 10-6, 10-7 order of pleadings and waiver rules).

Remington waived the right to file a request to revise (and another motion to strike) by filing its 2016 Motion to Strike. Because the wrongful marketing claim alleged by the Second Amended Complaint, including the causation element of the claim, is the same claim as that alleged by the First Amended Complaint, Remington's right to request revision is not renewed by the filing of the Second Amended Complaint. Even if it were renewed, revisions intended to set the Second Amended Complaint up for a Motion to Strike are pointless when the Supreme Court has already held that the claims asserted are sufficient as a matter of law. For this reason alone, Remington's Request to Revise should be denied.

C. In Addition to Being Waived, the Request to Revise Must Be Denied under Practice Book § 10-1.

A pleading need only "contain a plain and concise statement of the material facts on which the pleader relies, but not of the evidence by which they are to be proved . . . ." Prac. Bk. § 10-1 (emphasis added). The Second Amended Complaint makes a plain and concise statement of the material causation facts. See DN 276, Sec. Am. Compl. ¶¶ 1, 12, 32-39, 52-53. Among numerous paragraphs asserting causation, plaintiffs allege that Remington's conduct constituted a "substantial factor" of the injuries sustained at Sandy Hook Elementary School. *Id.* at ¶ 52. Again, these allegations track the Supreme Court's understanding of the allegations of the First

Amended Complaint exactly. *See, e.g., Soto*, 331 Conn. at 74. ("[T]he plaintiffs contend that the defendants' marketing of the XM15-E2S to civilians for offensive assault missions was a substantial factor in causing the plaintiffs' injuries.").

Remington argues that plaintiffs' assertion of "substantial factor" is an unsupported "legal conclusion." DN 281, Req. to Rev. at 7. The Practice Book explicitly permits a party to plead legal effect as long as the claim "fairly [] apprise[s] the adverse party of the state of facts which it [] intend[s] to prove." Prac. Bk. § 10-2. Causation facts, explicit and implied, were advanced in the body of the Second Amended Complaint to support the "substantial factor" allegation. What Remington is asking is that plaintiffs plead evidence. A request to revise seeking information that is "merely evidential," such as this one, should not be granted because "the defendant is not entitled to know the plaintiff's proof but only what he claims as his cause of action." *Talbot,* 2004 WL 1153747, at *1; *Kileen,* 36 Conn. Supp. at 348-49. Simply put, a "request to revise may not be used as a substitute for discovery," *Golino*, 1990 WL 283122, at *1, especially where – as here – the plaintiff needs discovery to fully understand the defendant's wrongdoing and its relationship to the harms suffered.

Remington's string citation to two federal court cases and five Connecticut superior court decisions – none of which concerned a request to revise does not support its argument that plaintiffs must allege additional causation facts. Each of these cases applies an elevated pleading standard that Remington itself does not even claim applies to plaintiffs' pleading of causation. *See Travelers Indem. Co. v. Cephalon, Inc*., 620 F. App'x 82, 86 (3d Cir. 2015) (holding that plaintiffs failed to "state *with particularity* the circumstances constituting fraud or mistake" to support CUTPA claim, as required by Rule 9(b) of the FRCP) (emphasis added); *Nwachukwu v. Liberty Bank*, 257 F. Supp. 3d 280, 303 (D. Conn. 2017) (applying federal plausibility pleading

standard and holding that plaintiff's CUTPA allegation was "of the sort *Iqbal* holds to be insufficient to state a claim")[5]; *Duncan v. PEH I*, 2003 WL 1962789, at *4 (Conn. Super. Apr. 1, 2003) (Booth, J.) (relying on *S.M.S. Textile Mills* "particularity" standard in evaluating whether plaintiff stated a claim under CUTPA); *Heath v. Micropatent*, 1999 WL 1328140, at *3 (Conn. Super. Dec. 30, 1999) (Silbert, J.) (holding that plaintiff's CUTPA allegations failed to allege fraud with specificity required by *Maruca v. Phillips*, 139 Conn. 79 (1952)); *see also Von Pein v. Magic Bristles, LLC*, 2013 WL 453048, at *7 (Conn. Super. Jan. 8, 2013) (Doherty, J.) (holding that plaintiffs failed to plead "aggravating unscrupulous conduct" necessary to support CUTPA claim based on violations of the Home Improvement Act)); *Patterson v. Sullo*, 2012 WL 4040259, at *5 (Conn. Super. Aug. 20, 2012) (Martin, J.) (same).[6]

In the parenthetical accompanying *Duncan v. PEH I*, Remington misstates the holding of that case. Remington quotes *Duncan* to suggest that the plaintiff in that matter "failed to allege sufficient facts to demonstrate how these violations were the actual cause of the injury." DN 281, Req. to Rev. at 6. But the court actually held the opposite: Judge Booth denied defendant's motion to strike both of plaintiff's CUTPA counts, holding that the plaintiff sufficiently pled,

[5] The holding of *Nwachukwu* additionally relied on the failure of the plaintiff, a Nigerian bank customer, to plead that the unlawful closing of his bank account constituted an ascertainable loss under the Federal Rules of Civil Procedure. *Nwachukwu*, 257 F. Supp.3d at 301.

[6] Remington additionally relies on this court's decision in *Builes v. Kashinevsky*, 2009 WL 3366265, at *4 (Conn. Super. Sept. 15, 2009) (Bellis, J.) to support its contention that "this Court has [] recognized the requirement of pleading facts to establish proximate causation when asserting a CUTPA claim." DN 281, Req. to Rev. at 6. But in *Builes*, this court held that the plaintiff failed to state a claim because the plaintiff's claim for emotional distress did not constitute an ascertainable loss under CUTPA. *See Builes v. Kashinevsky*, 2009 WL 3366265, at *6 ("Accordingly, [plaintiff's CUTPA claim] is insufficient as the plaintiff failed to properly plead ascertainable loss."). This issue, however, was already considered and decided in plaintiffs' favor by the Connecticut Supreme Court. *See Soto*, 331 Conn. at 116 ("[W]e conclude that, at least with respect to wrongful advertising claims, personal injuries alleged to have resulted directly from such advertisements are cognizable under CUTPA.").

with particularity, that defendants' misrepresentations, which plaintiff alleged resulted in a drowning death, constituted CUTPA violations.[7] *Id.* at 5. Remington's misstatement appears to be the result of the same cursory analysis provided to the other cases it cites in support of its motion. In short, Remington fails utterly to show how revision of the causation allegations is appropriate.

D. Remington's Other Arguments Must Be Rejected.

In addition to its other shortcomings, Remington's Second Request to Revise ignores the Supreme Court's ruling regarding CUTPA causation. Remington argues "there is no plausible causal connection between the publication of an advertisement and the deaths of Plaintiffs' decedents." DN 281, Req. to Rev. at 6. This argument flatly ignores the Supreme Court's holding *in this case on this issue*. The wrongful marketing CUTPA claims are not reduced to a single publication, as posited by Remington, but concern its marketing campaigns or schemes to promote its assault rifles. These schemes include, for example, the promotion of "civilian assault rifles for offensive, military style attack missions." *Soto*, 331 Conn. at 131. And the Supreme Court held that the "*most directly foreseeable harm"* associated with this wrongful conduct "is that innocent third parties could be shot as a result." *Soto*, 331 Conn. at 99 (emphasis added). The connection is not just plausible, it is, according to the state's highest court, the "most foreseeable" result of such a dangerous promotional campaign.

Remington then suggests that the Second Amended Complaint is factually insufficient because it does not identify the shooter by name. DN 281, Req. to Rev. at 7. It is clear that Remington's strategy is to shift as much attention to the shooter as it possibly can, while at the

[7] Defendant's quoted language was copied from the court's discrete analysis of whether plaintiff's reliance on statutory violations supported plaintiff's CUTPA claim.

same time trying to restrict scrutiny of its own conduct. But the shooter's name is not material to plaintiffs' legal claim, and there is no requirement that plaintiffs plead it.[8] *See Baxt v. Smith*, 2018 WL 3203877, at *3 (Conn. Super. June 1, 2018) (Povodator, J.) (Only if "requested-to-be-added language [is] needed" for a pleading to meet "minimum requirements for assertion of a valid cause of action . . . [will] the plaintiff be ordered to add to the then-current complaint.") (citing *Kileen*, 36 Conn. Supp. at 347). For these reasons as well, plaintiffs' objection to Remington's second requested revision must be sustained.

REQUEST NO. 3

Portion of Pleading to Be Revised

Count Eleven of the SAC.

Requested Revision

Delete Count Eleven of the SAC asserted by Natalie Hammond.

Plaintiffs' Response

Plaintiffs are filing a Revised Second Amended Complaint deleting Count Eleven.

[8] By the same token, Remington argues that plaintiffs should have to allege specifically that "Plaintiffs' decedents would not been [sic] murdered by Adam Lanza *but for* the publication of Remington's advertisements or marketing materials" and that the shooter "viewed [Remington's] advertisements or marketing materials." *See* DN 281, Req. to Rev. at 6-7. *Those allegations are not present in the First Amended Complaint*; there is no requirement they be alleged now.

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